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INTERSTATE COMMERCE COMMISSION

CONDITIONAL SALE AGREEMENT

Dated as of September 1, 1970

Between

ALLEN R. BRADLEY AND JOHN A. ZERBE

And

NORFOLK AND WESTERN RAILWAY COMPANY

AGREEMENT AND ASSIGNMENT

Dated as of September 1, 1970

Between

ALLEN R. BRADLEY AND JOHN A. ZERBE

And

THE FIRST PENNSYLVANIA BANKING AND
TRUST COMPANY, As Agent

CONDITIONAL SALE AGREEMENT dated as of September 1, 1970, between the persons named in Item 1 of Schedule A hereto (hereinafter collectively called the Vendor or Manufacturer, as more particularly set forth in Article 26 hereof), and Norfolk and Western Railway Company, a Virginia corporation (hereinafter called the Railroad).

WHEREAS, the Manufacturer has agreed to arrange to have constructed, and to sell and deliver to the Railroad, and the Railroad has agreed to purchase, the railroad equipment described in Schedule B hereto (hereinafter, together with additional and/or substitution equipment and replacement equipment acquired pursuant to the third paragraph of Article 2 and Article 7 hereof, respectively, called the Equipment);

Now, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto agree as follows:

ARTICLE 1. *Construction and Sale.* Pursuant to this Agreement, the Manufacturer will arrange to have the Equipment constructed at the plant set forth in Schedule B hereto and will sell and deliver the Equipment to the Railroad and the Railroad will purchase from the Manufacturer and accept delivery of and pay for (as hereinafter provided) the Equipment, each unit of which will be constructed in accordance with the specifications referred to in Schedule B hereto and in accordance with such modifications thereof as may have been agreed upon in writing by the Manufacturer and the Railroad (which specifications and modifications, if any, are hereinafter called the Specifications). The design, quality and component parts of the Equipment will conform to all Interstate Commerce Commission and Department of Transportation requirements and specifications and to all standards recommended by the Association of American Railroads reasonably interpreted as being applicable to railroad equipment of the character of the Equipment as of the date of this Agreement.

ARTICLE 2. *Delivery.* The Manufacturer will deliver the Equipment to the Railroad, f.o.b. the Railroad's tracks at the place or places and in accordance with the delivery schedule set forth in Schedule B hereto.

The Manufacturer's obligation as to time of delivery is subject, however, to delays resulting from causes beyond the Manufacturer's reasonable control, including, but not limited to, accidents due to natural causes, acts of the Railroad, acts of government (such as embargoes, priorities and allocations, war or war conditions), riot or civil commotion, sabotage, strikes, differences with workmen, fire, flood, explosion, accidents or other events resulting in damage to plant, equipment or facilities and delays in receiving necessary materials. The Manufacturer shall have no obligation to deliver any unit of the Equipment hereunder subsequent to the filing by or against the Railroad of a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended, and prior to the assumption in writing of all of the obligations of the Railroad under this Agreement by a trustee or trustees appointed for the Railroad acting pursuant to a court order or decree in any proceedings under said Section 77.

The Railroad may (a) purchase hereunder from the Manufacturer, or arrange for the acquisition by the Vendor from a person or persons other than the Railroad of, other units of standard-gauge railroad equipment (other than passenger or work equipment of types other than locomotives) first put into service no earlier than September 1, 1970 (hereinafter called Additional Equipment), which Additional Equipment may be acquired in lieu of or in addition to units of the Equipment, and (b) elect to exclude from this Agreement any unit or units of the Equipment described in Schedule B hereto. In the case of either of (a) or (b) above, the Vendor and the Railroad shall execute an agreement amendatory hereof or supplemental hereto providing for such inclusion hereunder of Additional Equipment or for such exclusion of any unit or units of the Equipment from this Agreement. If the Railroad should so elect to exclude any units of the Equipment from this Agreement for any reason other than the Manufacturer's failure to have such units constructed, and to sell and deliver the same in accordance with its

obligations hereunder, the Railroad shall nevertheless be obligated to accept such units and pay the full Purchase Price (as hereinafter defined) therefor if and when such units shall be completed and delivered to it by the Manufacturer, such payment to be made in cash by the Railroad or, in case the Railroad shall arrange therefor, by means of a conditional sale agreement, equipment trust or such other appropriate method of financing as the Railroad shall determine which will assure the Manufacturer of prompt payment in full for such units of the Equipment.

Upon the completion of construction of one or more units of the Equipment, such unit or units shall be presented to an authorized representative of the Railroad for inspection at the place designated in Schedule B hereto for delivery of such unit or units. If each such unit conforms to the specifications, such authorized representative shall execute and deliver to the Manufacturer, in duplicate, a certificate of acceptance (hereinafter called the Certificate of Acceptance) stating that the unit or units of the Equipment covered thereby have been inspected, have been found to conform to the Specifications, are marked in accordance with Article 6 hereof and are accepted on behalf of the Railroad.

Upon delivery by the Manufacturer to the Railroad and acceptance by the Railroad of a unit of the Equipment hereunder, the Railroad shall assume with respect thereto the responsibility and risk of loss.

ARTICLE 3. *Purchase Price and Payment.* The estimated unit price and the estimated total price of the Equipment are set forth in Schedule B hereto. Such estimated prices are subject to such increase or decrease as may be agreed to by the Manufacturer and the Railroad. The term "Purchase Price" as used herein shall mean the estimated prices as so increased or decreased.

Units of the Equipment shall be settled for in such number of groups of such units delivered to and accepted by the Railroad as shall be determined by mutual agreement of the Railroad and the Manufacturer (each such group being hereinafter called a Group).

The Railroad hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay to the Vendor, at such place as the Vendor may designate, the Purchase Price of the Equipment as stated in the invoice or invoices therefor (hereinafter called the Invoiced Price), as follows:

(a) on any Closing Date (as hereinafter defined) with respect to a Group, the amount, if any (hereinafter called the Adjustment Payment), by which the Invoiced Price of all the units of the Equipment for which settlement has theretofore been and is then being made (hereinafter called the Aggregate Invoiced Price), exceeds the sum of the Deferred Purchase Price set forth in Item 2 of Schedule A hereto and any amount previously paid or payable with respect to the Aggregate Invoiced Price pursuant to this subparagraph (a);

(b) if applicable, upon receipt of a final statement of the aggregate Purchase Price (hereinafter called the Final Statement) setting forth any revision of the Purchase Price of the Equipment (the Purchase Price as so revised being hereinafter called the Final Purchase Price), the amount, if any, by which the Final Purchase Price of all units of the Equipment, as stated in such Final Statement therefor, shall exceed the sum of the Deferred Purchase Price and the Adjustment Payment, if any; and

(c) in 15 consecutive annual instalments (as nearly equal as practicable) payable on September 1, 1971, and on each September 1 thereafter to and including September 1, 1985 (hereinafter called the instalment payment dates), an amount equal to the Aggregate Invoiced Price (or Final Purchase Price if an amount greater than the Aggregate Invoiced Price) of the Equipment less the amounts paid or payable with respect thereto pursuant to subparagraphs (a) and (b) of this paragraph.

If this Agreement is assigned by the Manufacturer, the obligations of the Railroad under subparagraphs (a) and (b) of this paragraph shall be unsecured obligations and the Manufacturer shall not have any lien on, or claim against, the Equipment or any part thereof with respect to such obligations.

The portion of the Purchase Price of the Equipment payable under subparagraph (c) of the preceding paragraph of this Article 3 shall bear interest from the respective Closing Dates at the rate of $9\frac{3}{4}\%$ per annum on the portion thereof payable on or prior to September 1, 1975, and at the rate of $10\frac{1}{4}\%$ on the portion thereof payable after September 1, 1975. Such interest will be paid by the Railroad to the Vendor, at such place as the Vendor may designate to the extent accrued, on March 1 and September 1 in each year, commencing March 1, 1971 (such dates being hereinafter called the interest payment dates).

The Final Statement, if any, shall be delivered by the Manufacturer to the Railroad as soon as practicable after the last Closing Date, but in no event later than September 1, 1971.

The term "Closing Date" with respect to any Group of the Equipment shall mean such date not more than 10 business days following receipt by the Railroad from the Manufacturer of the bill of sale, invoice, Certificate or Certificates of Acceptance and opinion of counsel for the Manufacturer with respect to such Group, as shall be fixed by the Railroad by notice telephoned, telegraphed or mailed to the Vendor at least five business days prior to the Closing Date designated therein. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and bank holidays in the Commonwealth of Virginia or the Commonwealth of Pennsylvania.

Interest under this Agreement shall be determined on the basis of a 360-day year of twelve 30-day months.

The Railroad will pay, to the extent legally enforceable, interest at the rate of 11% per annum upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof.

All payments provided for in this Article 3 shall be made in Federal funds. The Railroad shall not have the privilege of prepaying any instalment of its indebtedness hereunder prior to the date it becomes due, except as provided in Article 7 hereof.

ARTICLE 4. *Taxes.* All payments to be made by the Railroad hereunder will be free of expense to the Vendor for collection or other charges and will be free of expense to the Vendor with respect to the amount of any local, state or federal taxes—other than income, gross receipts (except gross receipts taxes in the nature of sales taxes), excess profits and similar taxes—or licenses hereafter levied or imposed upon or measured by this Agreement or any sale, use, payment, shipment, delivery or transfer of title under the terms hereof, all of which expenses, taxes and licenses the Railroad assumes and agrees to pay on demand in addition to the indebtedness in respect of the Purchase Price of the Equipment. The Railroad will also pay promptly all taxes and assessments which may be imposed upon the Equipment, upon the use or operation thereof, upon the earnings arising therefrom or upon the Vendor solely by reason of its ownership thereof and will keep at all times all and every part of the Equipment free and clear of all taxes and assessments which might in any way affect the title of the Vendor or result in a lien upon any unit of the Equipment; provided, however, that the Railroad shall be under no obligation to pay any taxes, assessments, licenses, charges, fines or penalties of any kind so long as it is contesting in good faith and by appropriate legal proceedings such taxes, assessments, licenses, charges, fines or penalties and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor hereunder. If any such taxes, assessments, licenses, charges, fines or penalties shall have been charged or levied against the Vendor directly and paid by the Vendor, the Railroad shall reimburse the Vendor on presentation of invoice therefor; provided, however, that the Railroad shall not be obligated to reimburse the Vendor for any expenses, taxes, assessments, licenses, charges, fines or

penalties so paid unless the Vendor shall have been legally liable with respect thereto or the Railroad shall have approved the payment thereof.

ARTICLE 5. *Title to the Equipment.* The Vendor shall and hereby does retain the full legal title to and property in the Equipment until the Railroad shall have made all of the payments hereunder and shall have kept and performed all its agreements contained herein, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Railroad as herein provided. Any and all additions to the Equipment and any and all replacements of the Equipment and of parts thereof and additions thereto shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

When and only when the Vendor shall have been paid the full indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon and all other payments required hereby, and all of the Railroad's obligations herein contained shall have been performed by the Railroad, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad without further transfer or action on the part of the Vendor, except that the Vendor, if requested by the Railroad, will execute a bill or bills of sale of the Equipment transferring the Vendor's title thereto and property therein to the Railroad or upon its order free of all liens and encumbrances created or retained hereby and deliver such bill or bills of sale to the Railroad at its address specified in Article 22 hereof. The Vendor will thereupon execute in the same manner and deliver at the same place, for filing, recording or deposit in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Railroad to the Equipment and will pay to the Railroad any money paid to the Vendor pursuant to Article 7 hereof and not

theretofore applied as therein provided. The Railroad hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such bill or bills of sale or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or to file such certificate within a reasonable time after written demand of the Railroad.

ARTICLE 6. *Marking of Equipment.* The Railroad will cause each unit of the Equipment to be kept numbered on both sides thereof with an identifying number as set out in Schedule B hereto and will keep and maintain, or cause to be kept and maintained, plainly, distinctly, permanently and conspicuously marked in stencil on both sides of such unit, in letters not less than one inch in height, a legend designated by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of the Vendor to the Equipment and its rights under this Agreement. The Railroad will not place any such unit of the Equipment in operation or exercise any control or dominion over any part thereof until such identifying number and legend shall have been so marked on both sides thereof and will replace or cause to be replaced promptly such identifying number and all or any part of such legend that may be removed, defaced or destroyed. The Railroad will not change or permit the change of the numbers of any such units unless it notifies the Vendor and furnishes the Vendor with evidence that the Railroad has filed, recorded and deposited in all public offices where this Agreement shall have been filed, recorded and deposited a statement of new numbers to be substituted for the old numbers. In the event that any unit or units of replacement equipment acquired in accordance with Article 7 hereof shall have a different number from that of the unit or units replaced, the document or documents to be filed, recorded and deposited pursuant to said Article 7 shall show such new numbers.

Except as above provided, the Railroad will not allow the name of any person, association or corporation to be placed on the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Railroad may cause the Equipment to be lettered "Norfolk and Western," "N&W," or in some other appropriate manner for convenience of identification of the interests of the Railroad therein or of identification of the interests therein of a subsidiary or affiliated railroad company controlled by the Railroad (hereinafter called an Affiliate) to which the Railroad shall grant the right to possession and use of the Equipment pursuant to the provisions of Article 11 hereof.

ARTICLE 7. *Replacement of Equipment.* In the event that any unit of the Equipment shall be or become worn out, lost, destroyed, irreparably damaged, condemned, seized by a government or otherwise rendered permanently unfit or unavailable for use from any cause whatsoever (such occurrences being hereinafter called Casualty Occurrences) prior to the payment of the full indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon and all other payments required hereby, the Railroad shall promptly and fully inform the Vendor in regard thereto. When the aggregate Casualty Value (as hereinafter defined) of units having suffered a Casualty Occurrence under this Agreement (exclusive of units having suffered a Casualty Occurrence with respect to which payment shall have been made to the Vendor pursuant to this Article 7) shall exceed \$100,000, the Railroad, within 30 days of such event, shall promptly pay to the Vendor an amount equal to the aggregate Casualty Value of such units as of the date of such payment and shall file with the Vendor a certificate of any Vice President, the Assistant Vice President—Finance or the Treasurer of the Railroad setting forth the Casualty Value of each unit of the Equipment having suffered a Casualty Occurrence.

In the event that, in the judgment of the Railroad, any unit or units of the Equipment shall become obsolete or shall

require substantial additions or improvements thereto or the rebuilding thereof in order to be operated efficiently and economically, the Railroad shall so certify to the Vendor in a certificate of any Vice President, the Assistant Vice President—Finance or the Treasurer of the Railroad and shall pay to the Vendor an amount equal to the Casualty Value of such unit or units as set forth in such certificate. Such unit or units shall be deemed to have suffered a Casualty Occurrence on the date of such payment.

Upon the written request of the Railroad, following payment to the Vendor of a sum equal to the Casualty Value of a unit or units of the Equipment having suffered or having been deemed to have suffered a Casualty Occurrence, the Vendor shall deliver a bill or bills of sale of such unit or units transferring the Vendor's title thereto and property therein to the Railroad or upon its order free of all liens and encumbrances created or retained hereby.

Any money paid to the Vendor pursuant to the first or second paragraph of this Article 7 shall, as the Railroad may direct in a written statement filed with the Vendor, be applied (so long as none of the events of default specified in Article 16 hereof shall have occurred and be continuing), in whole or in part, (a) to prepay, pro rata, on the interest payment date next following receipt by the Vendor of such written direction, a portion of each instalment of unpaid indebtedness payable pursuant to subparagraph (c) of the third paragraph of Article 3 hereof (with interest accrued on the amount prepaid to be payable simultaneously therewith) or (b) toward the cost of acquisition by the vendor from a person or persons other than the Railroad of a unit or units of standard-gauge railroad equipment (other than passenger or work equipment of types other than locomotives), first put into service no earlier than September 1, 1970, to replace such unit having suffered a Casualty Occurrence. The Railroad shall deliver to the Vendor a certificate of any Vice President, the Assistant Vice President—Finance or the Treas-

urer of the Railroad that the cost of such replacement equipment does not exceed the fair value thereof.

If the cost of any replacement equipment shall exceed the amount to be paid therefor by the Vendor from money paid to it pursuant to the first or second paragraph of this Article 7, the Railroad shall provide the funds for the remainder of such cost and shall be entitled to a credit against any sum or sums thereafter payable to the Vendor pursuant to the first or second paragraph of this Article 7 to the extent that the Casualty Value which such replacement equipment would have if it suffered a Casualty Occurrence on the date such sum or sums are payable exceeds the amount so paid therefor by the Vendor.

The Casualty Value of each unit of the Equipment suffering a Casualty Occurrence (other than a replacement unit) shall be deemed to be the product of that portion of the Purchase Price thereof payable pursuant to subparagraph (c) of the third paragraph of Article 3 hereof multiplied by a fraction, the numerator of which shall be the number of instalment payment dates remaining as of the date payment is made with respect to such Casualty Occurrence to and including September 1, 1985, and the denominator of which shall be 15. The Casualty Value of each replacement unit having suffered a Casualty Occurrence shall be the product of the cost thereof (provided for by the application of money paid to the Vendor pursuant to the first or second paragraph of this Article 7 as well as such funds, if any, provided by the Railroad for the remainder of such cost) multiplied by a fraction, the numerator of which shall be the number of instalment payment dates remaining as of the date payment is made with respect to such Casualty Occurrence to and including September 1, 1985, and the denominator of which shall be the number of such instalment payment dates remaining as of the date of the acquisition of such replacement unit.

The Railroad will cause any replacement unit or units to be marked as provided in Article 6 hereof. Any and all such re-

placement units shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement as though part of the original Equipment delivered hereunder and shall be included in the term "Equipment" as used in this Agreement. Title to all such replacement units shall be free and clear of all prior liens and encumbrances except permitted liens as defined in Article 12 hereof and shall be taken initially and shall remain in the name of the Vendor subject to the provisions hereof, and the Railroad shall execute, acknowledge, deliver, file, record or deposit all such documents and do any and all such acts as may be necessary to cause such replacement units to come under and be subject to this Agreement and to protect the Vendor's title and its rights under this Agreement with respect thereto. All such replacement units other than such units acquired from the Manufacturer shall be warranted as being free from defects in materials, workmanship or design under normal use and service; provided, however, that if any such replacement unit shall be other than a locomotive such warranty may be limited to making good at the plant of the manufacturer of such unit any part or parts of such unit which shall, within one year after delivery thereof to the Railroad, be returned to such manufacturer with transportation charges prepaid and which the examination of such manufacturer shall disclose to its satisfaction to have been thus defective, and provided further that if any such replacement unit shall be a locomotive such warranty may be limited to making good at the plant of the manufacturer of such unit any part or parts of such unit which shall, within two years after delivery thereof to the Railroad or 250,000 miles in scheduled service, whichever shall first occur, be returned to such manufacturer with transportation charges prepaid and which the examination of such manufacturer shall disclose to its satisfaction to have been thus defective. Whenever the Railroad shall file with the Vendor a written direction to apply any money to or toward the cost of any replacement unit or units and a certificate of any Vice President, the Assistant Vice President—Finance or the Treasurer of the Railroad that the cost of such replacement unit or units

does not exceed the fair value thereof, the Railroad shall file with the Vendor such number of executed counterparts, as may reasonably be requested, of an opinion of counsel for the Railroad covering the matters set forth in this paragraph.

So long as none of the events of default specified in Article 16 hereof shall have occurred and be continuing, any money paid to the Vendor pursuant to this Article 7 shall, if the Railroad shall in writing so direct, be invested, pending its application as hereinabove provided, in such (i) direct obligations of the United States of America or obligations for which the faith of the United States is pledged to provide for the payment of principal and interest, (ii) open market commercial paper having the highest rating of the National Credit Office, Division of Dun & Bradstreet, Inc. or Standard & Poor's Corporation or (iii) certificates of deposit of commercial banks in the United States of America having capital and surplus aggregating at least \$50,000,000, in each case maturing in not more than one year from the date of such investment (such investments being hereinafter called Investments), as may be specified in such written direction. Any such obligations shall from time to time be sold and the proceeds reinvested in such Investments as the Railroad may in writing direct. Any interest received by the Vendor on any Investments shall be held by the Vendor and applied as herein provided. Upon any sale or the maturity of any Investments, the proceeds thereof, plus any interest received by the Vendor thereon, up to the cost thereof (including accrued interest), shall be held by the Vendor for application pursuant to this Article 7, and any excess shall be paid to the Railroad. If such proceeds (plus such interest) shall be less than such cost, the Railroad will promptly pay to the Vendor an amount equal to such deficiency. The Railroad will pay all expenses incurred by the Vendor in connection with the purchase and sale of Investments.

If any of the events of default specified in Article 16 hereof shall have occurred and be continuing, then so long as such event of default shall continue all money then held by the Vendor

amount due to it under the provisions of this Agreement, the Railroad shall pay the amount of such deficiency to the Vendor upon demand, and, if the Railroad shall fail to pay such deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Railroad. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Railroad, unless the Vendor shall have received written notification of demand for the satisfaction of indebtedness secured by any subordinate security interest in the Equipment before any such surplus shall have been paid to the Railroad.

The Railroad will pay all reasonable expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including attorneys' fees, and the amount thereof shall be included in such judgment.

The foregoing provisions of this Article 17 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

ARTICLE 18. *Applicable State Laws.* Any provision of this Agreement prohibited by any applicable law of any state, or which by any applicable law of any state would convert this Agreement into any instrument other than an agreement of conditional sale, shall as to such state be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any applicable state law may be waived, they are hereby waived by the Railroad to the full extent permitted by law, to the end that this Agreement shall be deemed to be an agreement of conditional sale and enforced as such.

Except as otherwise provided in this Agreement, the Railroad, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind,

notice of intention to take possession of or to sell or lease the Equipment, or any unit thereof, and any other requirements as to the time, place and terms of sale or lease thereof, any other requirements with respect to the enforcement of the Vendor's rights hereunder and any and all rights of redemption.

ARTICLE 19. *Extension not a Waiver.* No delay or omission in the exercise of any power or remedy herein provided or otherwise available to the Vendor shall impair or affect the Vendor's right thereafter to exercise the same. Any extension of time for payment hereunder or other indulgence duly granted to the Railroad shall not otherwise alter or affect the Vendor's rights or the obligations of the Railroad hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Railroad's obligations or the Vendor's rights hereunder with respect to any subsequent payments or defaults therein.

ARTICLE 20. *Recording.* The Railroad will cause this Agreement, the first assignment hereof (a counterpart of such assignment being attached hereto) and any amendments or supplements hereto and thereto to be filed and recorded with the Interstate Commerce Commission, and otherwise as may be required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Railroad will promptly furnish to the Vendor certificates or other evidences of such filing and recording and an opinion of counsel for the Railroad with respect thereto, satisfactory to the Vendor.

ARTICLE 21. *Payment of Expenses.* The Railroad will pay all reasonable costs and expenses (other than the fees and expenses of counsel for the Manufacturer) incident to this Agreement and the first assignment of this Agreement (including the fees and expenses of an agent, if the first assignee is an agent), and any instrument supplemental or related hereto or thereto, including all fees and expenses of counsel for the first assignee of this Agreement and for any party acquiring interests in such

first assignment, and all reasonable costs and expenses in connection with the transfer by any party of interests acquired in such first assignment. For the purposes of this Article 21, if the first assignee is an agent, then any successor agent to such agent shall also be considered the first assignee.

ARTICLE 22. *Notice.* Any notice hereunder to a party designated below shall be deemed to be properly served if delivered or mailed to such party at its address below:

(a) to the Railroad, at 8 North Jefferson Street, Roanoke, Virginia 24011;

(b) to the Manufacturer, at the address specified in Item 3 of Schedule A hereto;

(c) to any assignee of the Vendor, at such address as may have been furnished in writing to the Railroad by such assignee;

or at such other address as may have been furnished in writing by such party to the other appropriate party or parties designated above.

ARTICLE 23. *Article Headings.* All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

ARTICLE 24. *Effect and Modification of Agreement.* This Agreement, including the schedules relating hereto, exclusively and completely states the rights and obligations of the Vendor and the Railroad with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment, including the Temporary Conditional Sale Agreement dated as of December 1, 1969, between the Manufacturer and the Railroad providing, among other things, for the temporary possession and use of the Equipment by the Railroad in contemplation of the sale of the Equipment to the Railroad hereunder. No variation or modification of this Agreement and no

waiver of any of its provisions or conditions shall be valid unless in writing and duly executed on behalf of the Vendor and the Railroad.

ARTICLE 25. *Law Governing.* The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the Commonwealth of Virginia; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or deposit hereof and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited. The Railroad warrants that its chief place of business is in the Commonwealth of Virginia.

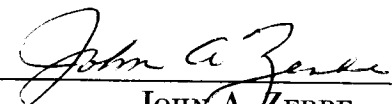
ARTICLE 26. *Definitions.* The term "Vendor," whenever used in this Agreement, means, before any assignment of any of its rights hereunder, the persons named in Item 1 of Schedule A hereto and the survivor of them and any successor or successors for the time being to their rights, powers, duties and obligations, under the Agreement for Construction of Railroad Equipment dated as of November 27, 1962, as amended, between said persons and the Railroad, and, after any such assignment, (a) any assignee for the time being of such particular assigned rights as regards such rights (b) for the purposes of the indemnifications provided in Articles 4, 13 and 14 hereof, any persons for whom any such assignee is acting as agent and (c) any assignor as regards any rights hereunder that are retained or excluded from any assignment. The term "Manufacturer," whenever used in this Agreement, means, both before and after any such assignment, the persons named in Item 1 of Schedule A hereto and any successor or successors for the time being to their rights, powers, duties and obligations under said Agreement for Construction of Railroad Equipment.

ARTICLE 27. *Execution.* This Agreement, which is dated for convenience as of September 1, 1970, may be executed in any

number of counterparts, each of which shall be deemed to be an original, and such counterparts together shall constitute a single instrument. The actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, Allen R. Bradley and John A. Zerbe have hereunto set their hands and seals, and the Railroad has caused this instrument to be signed and acknowledged by its proper officer and its corporate seal to be hereunto affixed and duly attested, as of the day and year first above written.

 (L. S.)
ALLEN R. BRADLEY

 (L. S.)
JOHN A. ZERBE

NORFOLK AND WESTERN RAILWAY COMPANY

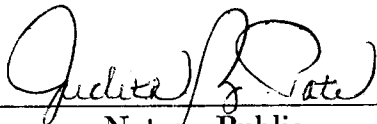
By 
Assistant Vice President—Finance

ATTEST


Secretary

COMMONWEALTH OF PENNSYLVANIA }
COUNTY OF PHILADELPHIA } ss.:

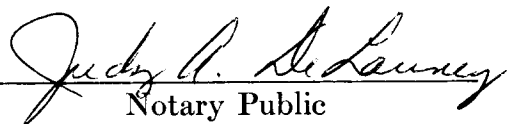
On this 8th day of September, 1970, before me personally appeared Allen R. Bradley and John A. Zerbe, to me known to be the persons described in and who executed the foregoing instrument on this date, and they acknowledged the same as their free act and deed.


Notary Public

JUDITH Z. POTE
Notary Public, Philadelphia, Philadelphia Co.
My Commission Expires January 28, 1974

COMMONWEALTH OF VIRGINIA }
CITY OF ROANOKE } ss.:

On this 24th day of September, 1970, before me personally appeared C. B. Deibel, to me personally known, who being by me duly sworn, says that he is Assistant Vice President—Finance of Norfolk and Western Railway Company, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument by him on this date was the free act and deed of said corporation.


Notary Public

My Commission Expires April 21, 1973

SCHEDULE A—ALLEN R. BRADLEY AND JOHN A. ZERBE

Item 1: Allen R. Bradley and John A. Zerbe, who, as Owners, are parties with the Railroad, as Builder, to an Agreement for Construction of Railroad Equipment dated as of November 27, 1962, as amended, whereby the Railroad, as an independent contractor, has agreed to construct and complete, for said Owners and as their property, the railroad equipment described in Schedule B hereto.

Item 2: Deferred Purchase Price: \$8,825,000.

Item 3: Allen R. Bradley, 1323 Bradford Road, Oreland, Pennsylvania 19075, and John A. Zerbe, 247 Buckboard Road, Willow Grove, Pennsylvania 19090.

SCHEDULE B—MESSRS. ALLEN R. BRADLEY AND JOHN A. ZERBE

<u>Type</u>	<u>Specifications</u>	<u>AAR Symbol</u>	<u>Manufacturer's Plant</u>	<u>Quantity</u>	<u>Railroad's Road Numbers (both inclusive)</u>	<u>Estimated Unit Price</u>	<u>Estimated Total Price</u>	<u>Delivery</u>
100-ton open top hopper cars with 3,420 cubic foot capacity and roller bearings—(Group 2)	Railroad's General Arrangement Drawing No. J-50962	HT	N&W Shops at Roanoke, Virginia	183	117817-117999	\$12,500	\$2,287,500	At Roanoke, Virginia in August 1970.
100-ton open top hopper cars with 3,420 cubic foot capacity and roller bearings—(Group 3)	"	"	"	537	118000-118536	12,250	6,578,250	At Roanoke, Virginia in September through November 1970.
			Total	720			\$8,865,750	

AGREEMENT AND ASSIGNMENT dated as of September 1, 1970 (hereinafter called this Assignment), between Allen R. Bradley and John A. Zerbe (hereinafter collectively called the Manufacturer) and THE FIRST PENNSYLVANIA BANKING AND TRUST COMPANY, a Pennsylvania corporation (hereinafter called the Agent), acting as agent for the investors (hereinafter called the Investors) whose names appear in Schedule A to an Agency Agreement dated as of September 1, 1970 (hereinafter called the Agency Agreement), a copy of which has been delivered to the Manufacturer.

WHEREAS, the Manufacturer and Norfolk and Western Railway Company, a Virginia corporation (hereinafter called the Railroad), have entered into a Conditional Sale Agreement dated as of September 1, 1970 (hereinafter called the Conditional Sale Agreement), providing for the construction of the railroad equipment described in Schedule B to the Conditional Sale Agreement and for the sale and delivery, on the conditions therein set forth, by the Manufacturer and the purchase by the Railroad of such railroad equipment (such railroad equipment, together with additional and/or substitution equipment and replacement equipment acquired pursuant to the third paragraph of Article 2 and Article 7 of the Conditional Sale Agreement, respectively, being hereinafter called the Equipment);

Now, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth and the sum of \$1 paid by the Agent to the Manufacturer, the receipt of which is hereby acknowledged, the parties hereto hereby agree as follows:

SECTION 1. The Manufacturer hereby assigns, transfers and sets over unto the Agent, its successors and assigns:

(a) All the right, title and interest of the Manufacturer in and to each unit of the Equipment when and as severally delivered and accepted and upon payment by the Agent to the Manufacturer of the amounts required to be paid

under Section 5 hereof on the Closing Date (as defined in the Conditional Sale Agreement) with respect thereto;

(b) All the right, title and interest of the Manufacturer in and to the Conditional Sale Agreement (except the right to have the Equipment constructed and to deliver the same, the right to receive the payments specified in the third paragraph of Article 2 thereof, in subparagraphs (a) and (b) of the third paragraph of Article 3 thereof, in the last paragraph of Article 7 thereof and in the last paragraph of Article 15 thereof and reimbursement for taxes paid or incurred by the Manufacturer as provided in Article 4 thereof) and in and to any and all amounts which may be or become due or owing to the Manufacturer under the Conditional Sale Agreement on account of the indebtedness in respect of the Purchase Price (as defined in the Conditional Sale Agreement) of the Equipment and interest thereon, and in and to any other sums becoming due from the Railroad under the Conditional Sale Agreement, other than those hereinabove excluded; and

(c) Except as limited above in subparagraph (b) hereof, all the Manufacturer's rights, powers, privileges and remedies under the Conditional Sale Agreement;

without any recourse, however, against the Manufacturer for or on account of the failure of the Railroad to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the Conditional Sale Agreement; provided, however, that this Assignment shall not subject the Agent to, or transfer, or pass, or in any way affect or modify, the obligations of the Manufacturer to have the Equipment constructed and to deliver the same in accordance with Articles 1 and 2 of the Conditional Sale Agreement or relieve the Railroad from its obligations to the Manufacturer under Articles 2, 4, 7, 13, 14 and 15, and under subparagraphs (a) and (b) of the third paragraph of Article 3, of the Conditional Sale Agreement, it being understood and agreed that, notwithstanding this Assignment or any subsequent assignment pursuant to the provisions of Article 15 of the Conditional Sale Agreement, all obligations

of the Manufacturer to the Railroad with respect to the Equipment shall be and remain enforceable by the Railroad, its successors and assigns, against and only against the Manufacturer. In furtherance of the foregoing assignment and transfer, the Manufacturer hereby authorizes and empowers the Agent in the Agent's own name, or in the name of the Agent's nominee, or in the name of and as attorney, hereby irrevocably constituted, for the Manufacturer, to ask, demand, sue for, collect, receive and enforce any and all funds, securities and other property to which the Agent is or may become entitled under this Assignment and compliance by the Railroad with the terms and agreements on its part to be performed under the Conditional Sale Agreement, but not at the expense of the Manufacturer.

If the Agent fails to pay the Manufacturer the amounts required to be paid with respect to each unit of the Equipment pursuant to Section 5 hereof at the time therein specified, then any right, title and interest in and to such unit, including any right, title and interest under the Conditional Sale Agreement with respect to such unit which has been assigned, transferred or set over to the Agent by the Manufacturer, shall automatically, and without further action on the part of the Agent, be reassigned, transferred and set over back to the Manufacturer by the Agent.

SECTION 2. The Manufacturer covenants and agrees that it will arrange to have the Equipment constructed and to deliver the same to the Railroad in accordance with the provisions of the Conditional Sale Agreement; and that, notwithstanding this Assignment, it will perform and fully comply with each and all of the covenants and conditions of the Conditional Sale Agreement set forth to be performed and complied with by the Manufacturer. The Manufacturer further covenants and agrees that it will warrant to the Agent and the Railroad that at the time of delivery to the Agent by the Manufacturer of a bill of sale, purporting to transfer to the Agent title to the units

of the Equipment in any Group (as defined in the Conditional Sale Agreement), it had legal title to each such unit and good and lawful right to sell such unit and at the time of delivery of each such unit of the Equipment to the Railroad under the Conditional Sale Agreement such unit was free of all claims, liens and encumbrances of any nature except only as are contemplated in the Conditional Sale Agreement; and the Manufacturer further covenants and agrees that it will defend the title to such unit against the demands of all persons whomsoever based on claims originating prior to said delivery of such unit by the Manufacturer to the Railroad; all subject, however, to the provisions of the Conditional Sale Agreement and the rights of the Railroad thereunder. The Manufacturer will not deliver any of the Equipment to the Railroad under the Conditional Sale Agreement until the filings and recordations referred to in Article 20 of the Conditional Sale Agreement have been effected.

The Manufacturer covenants and agrees with the Agent that in any suit, proceeding or action brought by the Agent under the Conditional Sale Agreement for any instalment of, or interest on, indebtedness in respect of the Purchase Price of the Equipment or to enforce any provision of the Conditional Sale Agreement, the Manufacturer will indemnify, protect and hold harmless the Agent from and against all expense, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever of the Railroad arising out of a breach by the Manufacturer of any obligation with respect to the Equipment or the delivery thereof, or by reason of any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by the Manufacturer. Any and all such obligations shall be and remain enforceable by the Railroad against and only against the Manufacturer and shall not be enforceable against the Agent or any party or parties in whom title to the Equipment or any unit thereof or any of the rights of the Manufacturer under the Conditional Sale Agreement shall vest by reason of this Assignment or of successive assignments.

The foregoing indemnification provisions are conditioned upon (a) the Agent's giving notice to the Manufacturer of any suit, proceeding or action by the Agent herein described, and promptly moving or taking other appropriate action, on the basis of Article 15 of the Conditional Sale Agreement, to strike any defense, setoff, counterclaim or recoupment asserted by the Railroad therein, and (b), if the court or other body having jurisdiction in such suit, proceeding or action denies such motion or other action and accepts such defense, setoff, counterclaim or recoupment as a triable issue in such suit, proceeding or action, the Agent's promptly notifying the Manufacturer of any such defense, setoff, counterclaim or recoupment asserted by the Railroad and giving the Manufacturer the right, at the Manufacturer's expense, to compromise, settle or defend against such defense, setoff, counterclaim or recoupment.

SECTION 3. The Manufacturer will cause to be plainly, distinctly, permanently and conspicuously marked in stencil on both sides of each unit of the Equipment, prior to the time of delivery thereof to the Railroad, in letters not less than one inch in height, the following legend:

OWNED BY A BANK OR TRUST COMPANY UNDER A
SECURITY AGREEMENT FILED UNDER INTERSTATE
COMMERCE ACT, SECTION 20c.

SECTION 4. Upon request of the Agent, its successors and assigns, the Manufacturer will execute any and all instruments which may be necessary or proper in order to discharge of record the Conditional Sale Agreement or any other instrument evidencing any interest of the Manufacturer therein or in the Equipment.

SECTION 5. Subject to the condition contained in the fifth paragraph of this Section 5, if the Agent shall at any time, on or before September 1, 1971, receive from the Railroad in respect of the Conditional Sale Agreement a copy of a Final

amount due to it under the provisions of this Agreement, the Railroad shall pay the amount of such deficiency to the Vendor upon demand, and, if the Railroad shall fail to pay such deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Railroad. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Railroad, unless the Vendor shall have received written notification of demand for the satisfaction of indebtedness secured by any subordinate security interest in the Equipment before any such surplus shall have been paid to the Railroad.

The Railroad will pay all reasonable expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including attorneys' fees, and the amount thereof shall be included in such judgment.

The foregoing provisions of this Article 17 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

ARTICLE 18. *Applicable State Laws.* Any provision of this Agreement prohibited by any applicable law of any state, or which by any applicable law of any state would convert this Agreement into any instrument other than an agreement of conditional sale, shall as to such state be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any applicable state law may be waived, they are hereby waived by the Railroad to the full extent permitted by law, to the end that this Agreement shall be deemed to be an agreement of conditional sale and enforced as such.

Except as otherwise provided in this Agreement, the Railroad, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind,

notice of intention to take possession of or to sell or lease the Equipment, or any unit thereof, and any other requirements as to the time, place and terms of sale or lease thereof, any other requirements with respect to the enforcement of the Vendor's rights hereunder and any and all rights of redemption.

ARTICLE 19. *Extension not a Waiver.* No delay or omission in the exercise of any power or remedy herein provided or otherwise available to the Vendor shall impair or affect the Vendor's right thereafter to exercise the same. Any extension of time for payment hereunder or other indulgence duly granted to the Railroad shall not otherwise alter or affect the Vendor's rights or the obligations of the Railroad hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Railroad's obligations or the Vendor's rights hereunder with respect to any subsequent payments or defaults therein.

ARTICLE 20. *Recording.* The Railroad will cause this Agreement, the first assignment hereof (a counterpart of such assignment being attached hereto) and any amendments or supplements hereto and thereto to be filed and recorded with the Interstate Commerce Commission, and otherwise as may be required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Railroad will promptly furnish to the Vendor certificates or other evidences of such filing and recording and an opinion of counsel for the Railroad with respect thereto, satisfactory to the Vendor.

ARTICLE 21. *Payment of Expenses.* The Railroad will pay all reasonable costs and expenses (other than the fees and expenses of counsel for the Manufacturer) incident to this Agreement and the first assignment of this Agreement (including the fees and expenses of an agent, if the first assignee is an agent), and any instrument supplemental or related hereto or thereto, including all fees and expenses of counsel for the first assignee of this Agreement and for any party acquiring interests in such

first assignment, and all reasonable costs and expenses in connection with the transfer by any party of interests acquired in such first assignment. For the purposes of this Article 21, if the first assignee is an agent, then any successor agent to such agent shall also be considered the first assignee.

ARTICLE 22. *Notice.* Any notice hereunder to a party designated below shall be deemed to be properly served if delivered or mailed to such party at its address below:

(a) to the Railroad, at 8 North Jefferson Street, Roanoke, Virginia 24011;

(b) to the Manufacturer, at the address specified in Item 3 of Schedule A hereto;

(c) to any assignee of the Vendor, at such address as may have been furnished in writing to the Railroad by such assignee;

or at such other address as may have been furnished in writing by such party to the other appropriate party or parties designated above.

ARTICLE 23. *Article Headings.* All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

ARTICLE 24. *Effect and Modification of Agreement.* This Agreement, including the schedules relating hereto, exclusively and completely states the rights and obligations of the Vendor and the Railroad with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment, including the Temporary Conditional Sale Agreement dated as of December 1, 1969, between the Manufacturer and the Railroad providing, among other things, for the temporary possession and use of the Equipment by the Railroad in contemplation of the sale of the Equipment to the Railroad hereunder. No variation or modification of this Agreement and no

waiver of any of its provisions or conditions shall be valid unless in writing and duly executed on behalf of the Vendor and the Railroad.

ARTICLE 25. *Law Governing.* The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the Commonwealth of Virginia; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or deposit hereof and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited. The Railroad warrants that its chief place of business is in the Commonwealth of Virginia.

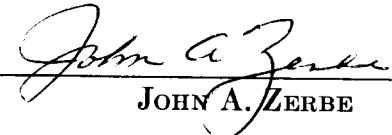
ARTICLE 26. *Definitions.* The term "Vendor," whenever used in this Agreement, means, before any assignment of any of its rights hereunder, the persons named in Item 1 of Schedule A hereto and the survivor of them and any successor or successors for the time being to their rights, powers, duties and obligations, under the Agreement for Construction of Railroad Equipment dated as of November 27, 1962, as amended, between said persons and the Railroad, and, after any such assignment, (a) any assignee for the time being of such particular assigned rights as regards such rights (b) for the purposes of the indemnifications provided in Articles 4, 13 and 14 hereof, any persons for whom any such assignee is acting as agent and (c) any assignor as regards any rights hereunder that are retained or excluded from any assignment. The term "Manufacturer," whenever used in this Agreement, means, both before and after any such assignment, the persons named in Item 1 of Schedule A hereto and any successor or successors for the time being to their rights, powers, duties and obligations under said Agreement for Construction of Railroad Equipment.

ARTICLE 27. *Execution.* This Agreement, which is dated for convenience as of September 1, 1970, may be executed in any

number of counterparts, each of which shall be deemed to be an original, and such counterparts together shall constitute a single instrument. The actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, Allen R. Bradley and John A. Zerbe have hereunto set their hands and seals, and the Railroad has caused this instrument to be signed and acknowledged by its proper officer and its corporate seal to be hereunto affixed and duly attested, as of the day and year first above written.

 (L. S.)
ALLEN R. BRADLEY

 (L. S.)
JOHN A. ZERBE

NORFOLK AND WESTERN RAILWAY COMPANY

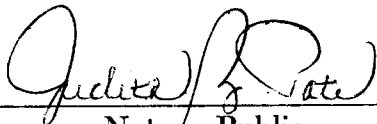
By 
Assistant Vice President—Finance

ATTEST


Secretary

COMMONWEALTH OF PENNSYLVANIA }
COUNTY OF PHILADELPHIA } ss.:

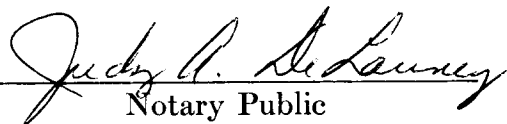
On this 8th day of September, 1970, before me personally appeared Allen R. Bradley and John A. Zerbe, to me known to be the persons described in and who executed the foregoing instrument on this date, and they acknowledged the same as their free act and deed.


Notary Public

JUDITH Z. POTE
Notary Public, Philadelphia, Philadelphia Co.
My Commission Expires January 28, 1974

COMMONWEALTH OF VIRGINIA }
CITY OF ROANOKE } ss.:

On this 24 day of September, 1970, before me personally appeared C. B. Deibel, to me personally known, who being by me duly sworn, says that he is Assistant Vice President—Finance of Norfolk and Western Railway Company, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument by him on this date was the free act and deed of said corporation.


Notary Public

My Commission Expires April 21, 1973

SCHEDULE A—ALLEN R. BRADLEY AND JOHN A. ZERBE

Item 1: Allen R. Bradley and John A. Zerbe, who, as Owners, are parties with the Railroad, as Builder, to an Agreement for Construction of Railroad Equipment dated as of November 27, 1962, as amended, whereby the Railroad, as an independent contractor, has agreed to construct and complete, for said Owners and as their property, the railroad equipment described in Schedule B hereto.

Item 2: Deferred Purchase Price: \$8,825,000.

Item 3: Allen R. Bradley, 1323 Bradford Road, Oreland, Pennsylvania 19075, and John A. Zerbe, 247 Buckboard Road, Willow Grove, Pennsylvania 19090.

SCHEDULE B—MESSRS. ALLEN R. BRADLEY AND JOHN A. ZERBE

<u>Type</u>	<u>Specifications</u>	<u>AAR Symbol</u>	<u>Manufacturer's Plant</u>	<u>Quantity</u>	<u>Railroad's Road Numbers (both inclusive)</u>	<u>Estimated Unit Price</u>	<u>Estimated Total Price</u>	<u>Delivery</u>
100-ton open top hopper cars with 3,420 cubic foot capacity and roller bearings—(Group 2)	Railroad's General Arrangement Drawing No. J-50962	HT	N&W Shops at Roanoke, Virginia	183	117817-117999	\$12,500	\$2,287,500	At Roanoke, Virginia in August 1970.
100-ton open top hopper cars with 3,420 cubic foot capacity and roller bearings—(Group 3)	"	"	"	537	118000-118536	12,250	6,578,250	At Roanoke, Virginia in September through November 1970.
			Total	720			\$8,865,750	

AGREEMENT AND ASSIGNMENT dated as of September 1, 1970 (hereinafter called this Assignment), between Allen R. Bradley and John A. Zerbe (hereinafter collectively called the Manufacturer) and THE FIRST PENNSYLVANIA BANKING AND TRUST COMPANY, a Pennsylvania corporation (hereinafter called the Agent), acting as agent for the investors (hereinafter called the Investors) whose names appear in Schedule A to an Agency Agreement dated as of September 1, 1970 (hereinafter called the Agency Agreement), a copy of which has been delivered to the Manufacturer.

WHEREAS, the Manufacturer and Norfolk and Western Railway Company, a Virginia corporation (hereinafter called the Railroad), have entered into a Conditional Sale Agreement dated as of September 1, 1970 (hereinafter called the Conditional Sale Agreement), providing for the construction of the railroad equipment described in Schedule B to the Conditional Sale Agreement and for the sale and delivery, on the conditions therein set forth, by the Manufacturer and the purchase by the Railroad of such railroad equipment (such railroad equipment, together with additional and/or substitution equipment and replacement equipment acquired pursuant to the third paragraph of Article 2 and Article 7 of the Conditional Sale Agreement, respectively, being hereinafter called the Equipment);

Now, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth and the sum of \$1 paid by the Agent to the Manufacturer, the receipt of which is hereby acknowledged, the parties hereto hereby agree as follows:

SECTION 1. The Manufacturer hereby assigns, transfers and sets over unto the Agent, its successors and assigns:

(a) All the right, title and interest of the Manufacturer in and to each unit of the Equipment when and as severally delivered and accepted and upon payment by the Agent to the Manufacturer of the amounts required to be paid

under Section 5 hereof on the Closing Date (as defined in the Conditional Sale Agreement) with respect thereto;

(b) All the right, title and interest of the Manufacturer in and to the Conditional Sale Agreement (except the right to have the Equipment constructed and to deliver the same, the right to receive the payments specified in the third paragraph of Article 2 thereof, in subparagraphs (a) and (b) of the third paragraph of Article 3 thereof, in the last paragraph of Article 7 thereof and in the last paragraph of Article 15 thereof and reimbursement for taxes paid or incurred by the Manufacturer as provided in Article 4 thereof) and in and to any and all amounts which may be or become due or owing to the Manufacturer under the Conditional Sale Agreement on account of the indebtedness in respect of the Purchase Price (as defined in the Conditional Sale Agreement) of the Equipment and interest thereon, and in and to any other sums becoming due from the Railroad under the Conditional Sale Agreement, other than those hereinabove excluded; and

(c) Except as limited above in subparagraph (b) hereof, all the Manufacturer's rights, powers, privileges and remedies under the Conditional Sale Agreement;

without any recourse, however, against the Manufacturer for or on account of the failure of the Railroad to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the Conditional Sale Agreement; provided, however, that this Assignment shall not subject the Agent to, or transfer, or pass, or in any way affect or modify, the obligations of the Manufacturer to have the Equipment constructed and to deliver the same in accordance with Articles 1 and 2 of the Conditional Sale Agreement or relieve the Railroad from its obligations to the Manufacturer under Articles 2, 4, 7, 13, 14 and 15, and under subparagraphs (a) and (b) of the third paragraph of Article 3, of the Conditional Sale Agreement, it being understood and agreed that, notwithstanding this Assignment or any subsequent assignment pursuant to the provisions of Article 15 of the Conditional Sale Agreement, all obligations

of the Manufacturer to the Railroad with respect to the Equipment shall be and remain enforceable by the Railroad, its successors and assigns, against and only against the Manufacturer. In furtherance of the foregoing assignment and transfer, the Manufacturer hereby authorizes and empowers the Agent in the Agent's own name, or in the name of the Agent's nominee, or in the name of and as attorney, hereby irrevocably constituted, for the Manufacturer, to ask, demand, sue for, collect, receive and enforce any and all funds, securities and other property to which the Agent is or may become entitled under this Assignment and compliance by the Railroad with the terms and agreements on its part to be performed under the Conditional Sale Agreement, but not at the expense of the Manufacturer.

If the Agent fails to pay the Manufacturer the amounts required to be paid with respect to each unit of the Equipment pursuant to Section 5 hereof at the time therein specified, then any right, title and interest in and to such unit, including any right, title and interest under the Conditional Sale Agreement with respect to such unit which has been assigned, transferred or set over to the Agent by the Manufacturer, shall automatically, and without further action on the part of the Agent, be reassigned, transferred and set over back to the Manufacturer by the Agent.

SECTION 2. The Manufacturer covenants and agrees that it will arrange to have the Equipment constructed and to deliver the same to the Railroad in accordance with the provisions of the Conditional Sale Agreement; and that, notwithstanding this Assignment, it will perform and fully comply with each and all of the covenants and conditions of the Conditional Sale Agreement set forth to be performed and complied with by the Manufacturer. The Manufacturer further covenants and agrees that it will warrant to the Agent and the Railroad that at the time of delivery to the Agent by the Manufacturer of a bill of sale, purporting to transfer to the Agent title to the units

of the Equipment in any Group (as defined in the Conditional Sale Agreement), it had legal title to each such unit and good and lawful right to sell such unit and at the time of delivery of each such unit of the Equipment to the Railroad under the Conditional Sale Agreement such unit was free of all claims, liens and encumbrances of any nature except only as are contemplated in the Conditional Sale Agreement; and the Manufacturer further covenants and agrees that it will defend the title to such unit against the demands of all persons whomsoever based on claims originating prior to said delivery of such unit by the Manufacturer to the Railroad; all subject, however, to the provisions of the Conditional Sale Agreement and the rights of the Railroad thereunder. The Manufacturer will not deliver any of the Equipment to the Railroad under the Conditional Sale Agreement until the filings and recordations referred to in Article 20 of the Conditional Sale Agreement have been effected.

The Manufacturer covenants and agrees with the Agent that in any suit, proceeding or action brought by the Agent under the Conditional Sale Agreement for any instalment of, or interest on, indebtedness in respect of the Purchase Price of the Equipment or to enforce any provision of the Conditional Sale Agreement, the Manufacturer will indemnify, protect and hold harmless the Agent from and against all expense, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever of the Railroad arising out of a breach by the Manufacturer of any obligation with respect to the Equipment or the delivery thereof, or by reason of any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by the Manufacturer. Any and all such obligations shall be and remain enforceable by the Railroad against and only against the Manufacturer and shall not be enforceable against the Agent or any party or parties in whom title to the Equipment or any unit thereof or any of the rights of the Manufacturer under the Conditional Sale Agreement shall vest by reason of this Assignment or of successive assignments.

The foregoing indemnification provisions are conditioned upon (a) the Agent's giving notice to the Manufacturer of any suit, proceeding or action by the Agent herein described, and promptly moving or taking other appropriate action, on the basis of Article 15 of the Conditional Sale Agreement, to strike any defense, setoff, counterclaim or recoupment asserted by the Railroad therein, and (b), if the court or other body having jurisdiction in such suit, proceeding or action denies such motion or other action and accepts such defense, setoff, counterclaim or recoupment as a triable issue in such suit, proceeding or action, the Agent's promptly notifying the Manufacturer of any such defense, setoff, counterclaim or recoupment asserted by the Railroad and giving the Manufacturer the right, at the Manufacturer's expense, to compromise, settle or defend against such defense, setoff, counterclaim or recoupment.

SECTION 3. The Manufacturer will cause to be plainly, distinctly, permanently and conspicuously marked in stencil on both sides of each unit of the Equipment, prior to the time of delivery thereof to the Railroad, in letters not less than one inch in height, the following legend:

OWNED BY A BANK OR TRUST COMPANY UNDER A
SECURITY AGREEMENT FILED UNDER INTERSTATE
COMMERCE ACT, SECTION 20c.

SECTION 4. Upon request of the Agent, its successors and assigns, the Manufacturer will execute any and all instruments which may be necessary or proper in order to discharge of record the Conditional Sale Agreement or any other instrument evidencing any interest of the Manufacturer therein or in the Equipment.

SECTION 5. Subject to the condition contained in the fifth paragraph of this Section 5, if the Agent shall at any time, on or before September 1, 1971, receive from the Railroad in respect of the Conditional Sale Agreement a copy of a Final

Statement (as defined in subparagraph (b) of the third paragraph of Article 3 of the Conditional Sale Agreement) showing that the Final Purchase Price (as defined in said subparagraph (b)) of all Groups of units of the Equipment delivered under the Conditional Sale Agreement exceeds the Aggregate Invoiced Price (as defined in subparagraph (a) of said third paragraph) of such units of the Equipment but is less than the Deferred Purchase Price (as defined in said subparagraph (a)) of all units of the Equipment, the Agent forthwith shall pay to the Manufacturer the amount of such excess.

The Agent shall, subject to the condition contained in the fifth paragraph of this Section 5, pay to the Manufacturer, on each Closing Date fixed as provided in said Article 3 occurring on or before September 1, 1971, with respect to a Group of units of the Equipment, that portion of the Invoiced Price (as defined in said Article 3) of such Group payable by the Railroad to the Manufacturer pursuant to subparagraph (c) of the third paragraph of said Article 3, provided that on or before such Closing Date there shall have been delivered to the Agent, as provided in Article 15 of the Conditional Sale Agreement, the following documents, in such number of counterparts or copies as may reasonably be requested, in form and substance satisfactory to it and to its special counsel hereinafter mentioned:

(a) Bill of sale from the Manufacturer to the Agent, transferring to the Agent, for the benefit of the Investors, title to the units of the Equipment in such Group and warranting to the Agent and to the Railroad that, at the time of delivery of said bill of sale to the Agent the Manufacturer had legal title to such units and good and lawful right to sell such units and at the time of delivery of such units of the Equipment to the Railroad under the Conditional Sale Agreement such units were free of all claims, liens or encumbrances of any nature except only as are contemplated in the Conditional Sale Agreement;

(b) Certificate of acceptance signed by an authorized representative of the Railroad and dated as of such Closing Date stating that the units of the Equipment in such Group have been delivered to the Railroad and inspected and

accepted on behalf of the Railroad, warranting to the Agent that (i) at the time of delivery by the Manufacturer to the Agent of the bill of sale relating to such units, the Manufacturer had legal title to such units and good and lawful right to sell such units, and (ii) no claims, liens or encumbrances of any nature attached to such units except only as are contemplated herein, in the Conditional Sale Agreement or in the Agency Agreement between the time of the delivery of the units of such Group to the Railroad by the Manufacturer and the time of the delivery of said bill of sale from the Manufacturer to the Agent transferring to the Agent title to such units and further stating that there was plainly, distinctly, permanently and conspicuously marked in stencil on both sides of each of such units at the time of its acceptance, in letters not less than one inch in height, the following legend:

OWNED BY A BANK OR TRUST COMPANY UNDER A
SECURITY AGREEMENT FILED UNDER INTERSTATE
COMMERCE ACT, SECTION 20c.

(c) Invoice of the Manufacturer for the units of the Equipment in such Group, with a certification by the Railroad endorsed thereon as to the correctness of the price of such units as set forth in said invoice;

(d) Opinion of Messrs. Dewey, Ballantine, Bushby, Palmer & Wood, who are acting as special counsel for the Agent and for the Investors, dated as of such Closing Date, stating that (i) the Agency Agreement has been duly authorized, executed and delivered by, and is a legal, valid and binding instrument of, each of the parties thereto and is enforceable in accordance with its terms, (ii) the Conditional Sale Agreement and this Assignment have been duly authorized, executed and delivered by the Railroad and duly executed and delivered by the Manufacturer, and are legal, valid and binding instruments of, the respective parties thereto and hereto and are enforceable in accordance with their terms, (iii) the Agent is vested with all the rights, titles, interests, powers, privileges and remedies purported to be assigned to it by this Assignment, (iv) title to the units of the Equipment in such Group is validly vested in the Agent and such units, at the time of delivery thereof to the Railroad under the Conditional Sale Agreement, were free of all claims, liens and encumbrances except only as are contemplated in Conditional

Sale Agreement, (v) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the execution and delivery of the Conditional Sale Agreement or this Assignment, (vi) the Conditional Sale Agreement and this Assignment have been duly filed and recorded with the Interstate Commerce Commission and no other filing or recordation is necessary for the protection of the rights of the Agent in the United States of America, and the Conditional Sale Agreement and this Assignment have been deposited with the Registrar General of Canada (with provision being made for publication of notice of such deposit) and filed with the Department of Financial and Commercial Affairs, Companies Branch, of Ontario, Canada and that no other filing or recordation is necessary for the protection of the rights of the Agent in Canada, and (vii) registration of the Conditional Sale Agreement or this Assignment, or of interests acquired therein or herein, or of the Certificates of Interest (as defined in the Agency Agreement), under the circumstances contemplated by this agreement, is not required under the Securities Act of 1933, as amended, and qualification of an indenture with respect thereto is not required under the Trust Indenture Act of 1939, as amended;

(e) Opinion of counsel for the Railroad to the effect set forth in clauses (iv), (v) and (vi) of subparagraph (d) of this paragraph, and stating that (i) the Railroad is a duly organized and existing corporation in good standing under the laws of the Commonwealth of Virginia (the state of its incorporation), and has the power and authority to own its properties and to carry on its business as now conducted, (ii) the Conditional Sale Agreement has been duly authorized, executed and delivered on behalf of the Railroad and is a legal, valid and binding instrument enforceable in accordance with its terms, (iii) the execution and delivery of the Agency Agreement and the Conditional Sale Agreement, and the consummation and fulfillment of the transactions contemplated therein, will not conflict with, result in a breach of, or constitute a default under, the Charter and Bylaws of the Railroad, any action of the Board of Directors of the Railroad authorized under said Charter and Bylaws, any of the terms, conditions or provisions of any law, regulation, order, writ, injunction, decree of any court or other governmental instrumentality or of any agreement or instrument to which the Railroad is now a party and (iv) this Assign-

ment has been duly executed and delivered by the Manufacturer and, assuming due authorization, execution and delivery by the Agent, is a legal, valid and binding instrument enforceable in accordance with its terms; and

(f) Opinion of counsel for the Manufacturer stating that (i) the Conditional Sale Agreement and this Assignment have been duly executed and delivered by the Manufacturer and, assuming due authorization, execution and delivery thereof by the Railroad and the Agent, respectively, are legal, valid and binding instruments enforceable in accordance with their terms, (ii) the Agent is vested with all the rights, titles, interests, powers, privileges and remedies purported to be assigned to it by this Assignment, (iii) title to the units of the Equipment in such Group is validly vested in the Agent and such units, at the time of delivery thereof to the Railroad under the Conditional Sale Agreement, were free of all claims, liens and encumbrances except only as are contemplated in the Conditional Sale Agreement and (iv) the Temporary Conditional Sale Agreement dated as of December 1, 1969, between the Manufacturer and the Railroad providing, among other things, for the temporary possession and use of the Equipment by the Railroad in contemplation of the sale of the Equipment to the Railroad under the Conditional Sale Agreement has been terminated with respect to the Equipment and the units of the Equipment in such Group are free of all claims, liens and encumbrances arising thereunder.

Any opinion delivered hereunder on or after their first Date of Deposit (as defined in the Agency Agreement) may state that counsel signing such opinion reaffirms any statement contained in any opinion of the same counsel theretofore delivered hereunder without repeating the substance of such earlier opinion. In giving the opinions specified in subparagraphs (d), (e) and (f) of the second paragraph of this Section 5, counsel may qualify any opinion to the effect that any agreement is a legal, valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditors' rights generally. In giving the opinion specified in said sub-

paragraph (d), counsel may rely (a) as to the due authorization and execution of the Agency Agreement referred to in clause (i) of said subparagraph (d) upon the representation of each of the parties to the Agency Agreement contained in Section 5 of Article 4 thereof, (b) as to any matter governed by the law of any jurisdiction other than New York or the United States of America, upon the opinion of counsel for the Manufacturer or counsel for the Railroad or other counsel satisfactory to Special Counsel as to such matter and (c) as to the title to and the security interests in the Equipment, upon the warranties of the Manufacturer and of the Railroad made in their documents delivered with respect to such Equipment pursuant to subparagraphs (a) and (b) of the second paragraph of this Section 5. In giving the opinion specified in subparagraph (f), counsel may rely as to any matter governed by the law of any jurisdiction other than Pennsylvania or the United States of America upon an opinion of counsel practicing in such jurisdiction as to such matter.

The obligation of the Agent hereunder to make any payment to the Manufacturer as hereinabove provided is hereby expressly conditioned upon the prior deposit by the Investors with the Agent, pursuant to the Agency Agreement, of sufficient funds to enable the Agent to make such payment; provided, however, in the event of the failure of any Investor to make timely deposit with the Agent in full of the funds required to be deposited by it under the Agency Agreement, the Manufacturer shall be entitled to look only to the Railroad for the payment which would have been made from any Investors' funds not so deposited.

The Agent shall not be obligated to make any of the above-mentioned payments at any time while an event of default, or any event which with the lapse of time and/or demand provided for in the Conditional Sale Agreement would constitute an event of default, shall be subsisting under the Conditional Sale Agreement.

It is understood and agreed that the Agent shall not be required to make any payment with respect to any units of the

Equipment excluded from the Conditional Sale Agreement pursuant to Article 2 or 7 thereof.

SECTION 6. The Agent may assign all or any of its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from the Railroad thereunder. In the event of any such assignment any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Agent hereunder.

SECTION 7. The Manufacturer hereby:

(a) represents and warrants to the Agent, its successors and assigns, that the Conditional Sale Agreement was duly executed and delivered by the Manufacturer for a valid consideration, that it is a valid and existing agreement binding upon the Manufacturer and that it is now in force without amendment thereto; and

(b) covenants and agrees that it will from time to time and at all times, at the request of the Agent or its successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Agent or intended so to be.

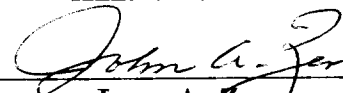
SECTION 8. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the Commonwealth of Virginia; provided, however, that the parties shall be entitled to all the rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or deposit of the Conditional Sale Agreement and this Assignment as shall be conferred by the laws of the several jurisdictions in which the Conditional Sale Agreement and this Assignment shall be filed, recorded or deposited.

SECTION 9. This Assignment, which is dated for convenience as of September 1, 1970, may be executed in any number of

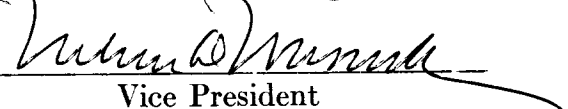
counterparts, each of which shall be deemed to be an original, and such counterparts together shall constitute a single instrument. The actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed. The Agent will deliver one of such counterparts to the Railroad.

IN WITNESS WHEREOF, Allen R. Bradley and John A. Zerbe have hereunto set their hands and seals, and the Agent has caused this instrument to be signed and acknowledged by its proper officer and its corporate seal to be hereunto affixed and duly attested, as of the day and year first above written.

 (L. S.)
ALLEN R. BRADLEY

 (L. S.)
JOHN A. ZERBE

THE FIRST PENNSYLVANIA BANKING
AND TRUST COMPANY, as Agent

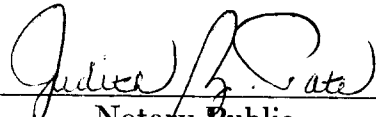
By 
Vice President

ATTEST:


Assistant Secretary

COMMONWEALTH OF PENNSYLVANIA }
COUNTY OF PHILADELPHIA } ss.:

On this *8th* day of September, 1970, before me personally appeared Allen R. Bradley and John A. Zerbe, to me known to be the persons described in and who executed the foregoing instrument on this date, and they acknowledged the same as their free act and deed.


Notary Public

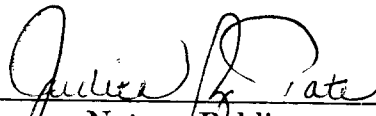
JUDITH Z. ROTE

Notary Public, Philadelphia, Philadelphia Co.

My Commission Expires January 28, 1974

COMMONWEALTH OF PENNSYLVANIA }
COUNTY OF PHILADELPHIA } ss.:

On this *8th* day of September, 1970, before me personally appeared **NELSON D. WARWICK** to me personally known, who, being by me duly sworn, says that he is a Vice President of The First Pennsylvania Banking and Trust Company, that the seal affixed to the foregoing instrument is the seal of said association, that said instrument was signed and sealed on behalf of said association by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument by him on this date was the free act and deed of said association.


Notary Public

JUDITH Z. ROTE

Notary Public, Philadelphia, Philadelphia Co.

My Commission Expires January 28, 1974

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

Norfolk and Western Railway Company (hereinafter called the Railroad) hereby acknowledges due notice of the assignment made by the foregoing Agreement and Assignment dated as of September 1, 1970.

The Railroad covenants and agrees that it will warrant to the Agent, at the time of each delivery of its certificate of acceptance with respect to any units of the Equipment pursuant to subparagraph (b) of the second paragraph of Article 5 of said Agreement and Assignment, that no claims, liens or encumbrances of any nature attached to such units, except only as are contemplated in said Agreement and Assignment or in the Conditional Sale Agreement and Agency Agreement referred to therein, between the time of the delivery of such units to the Railroad by the Manufacturer referred to in said Agreement and Assignment and the Closing Date (as defined in said Agreement and Assignment) in respect of such units.

NORFOLK AND WESTERN RAILWAY COMPANY

By



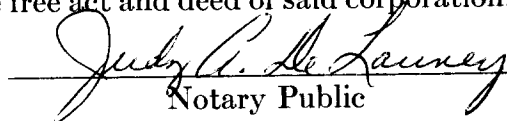
Assistant Vice President—Finance

COMMONWEALTH OF VIRGINIA

CITY OF ROANOKE

ss.:

On this 2d day of September, 1970, before me personally appeared C. B. Deibel, to me personally known, who, being by me duly sworn, says that he is Assistant Vice President—Finance of Norfolk and Western Railway Company, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument by him on this date was the free act and deed of said corporation.



Notary Public

My Commission Expires April 21, 1973